

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1746 be amended to read as follows:

- 1 Page 2, after line 31 begin a new paragraph and insert:
2 "SECTION 1. IC 35-50-2-9 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) **Except as**
4 **provided in subsection (c)**, the state may seek either a death sentence
5 or a sentence of life imprisonment without parole for murder by
6 alleging, on a page separate from the rest of the charging instrument,
7 the existence of at least one (1) of the aggravating circumstances listed
8 in subsection (b). In the sentencing hearing after a person is convicted
9 of murder, the state must prove beyond a reasonable doubt the existence
10 of at least one (1) of the aggravating circumstances alleged. However,
11 the state may not proceed against a defendant under this section if a
12 court determines at a pretrial hearing under IC 35-36-9 that the
13 defendant is a mentally retarded individual.
14 (b) ~~The~~ **For purposes of subsection (a)**, the aggravating
15 circumstances are as follows:
16 (1) The defendant committed the murder by intentionally killing
17 the victim while committing or attempting to commit any of the
18 following:
19 (A) Arson (IC 35-43-1-1).
20 (B) Burglary (IC 35-43-2-1).
21 (C) Child molesting (IC 35-42-4-3).
22 (D) Criminal deviate conduct (IC 35-42-4-2).
23 (E) Kidnapping (IC 35-42-3-2).
24 (F) Rape (IC 35-42-4-1).
25 (G) Robbery (IC 35-42-5-1).

- 1 (H) Carjacking (IC 35-42-5-2).
- 2 (I) Criminal gang activity (IC 35-45-9-3).
- 3 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- 4 **(K) Criminal confinement (IC 35-42-3-3).**
- 5 (2) The defendant committed the murder by the unlawful
- 6 detonation of an explosive with intent to injure person or damage
- 7 property.
- 8 (3) The defendant committed the murder by lying in wait.
- 9 (4) The defendant who committed the murder was hired to kill.
- 10 (5) The defendant committed the murder by hiring another person
- 11 to kill.
- 12 (6) The victim of the murder was a corrections employee,
- 13 probation officer, parole officer, community corrections worker,
- 14 home detention officer, fireman, judge, or law enforcement
- 15 officer, and either:
- 16 (A) the victim was acting in the course of duty; or
- 17 (B) the murder was motivated by an act the victim performed
- 18 while acting in the course of duty.
- 19 (7) The defendant has been convicted of another murder.
- 20 (8) The defendant has committed another murder, at any time,
- 21 regardless of whether the defendant has been convicted of that
- 22 other murder.
- 23 (9) The defendant was:
- 24 (A) under the custody of the department of correction;
- 25 (B) under the custody of a county sheriff;
- 26 (C) on probation after receiving a sentence for the commission
- 27 of a felony; or
- 28 (D) on parole;
- 29 at the time the murder was committed.
- 30 (10) The defendant dismembered the victim.
- 31 (11) The defendant burned, mutilated, or tortured the victim while
- 32 the victim was alive.
- 33 (12) The victim of the murder was less than twelve (12) years of
- 34 age.
- 35 (13) The victim was a victim of any of the following offenses for
- 36 which the defendant was convicted:
- 37 (A) Battery as a Class D felony or as a Class C felony under
- 38 IC 35-42-2-1.
- 39 (B) Kidnapping (IC 35-42-3-2).
- 40 (C) Criminal confinement (IC 35-42-3-3).
- 41 (D) A sex crime under IC 35-42-4.
- 42 (14) The victim of the murder was listed by the state or known by
- 43 the defendant to be a witness against the defendant and the
- 44 defendant committed the murder with the intent to prevent the
- 45 person from testifying.
- 46 (15) The defendant committed the murder by intentionally
- 47 discharging a firearm (as defined in IC 35-47-1-5):

- 1 (A) into an inhabited dwelling; or
- 2 (B) from a vehicle.

3 (16) The victim of the murder was pregnant and the murder
 4 resulted in the intentional killing of a fetus that has attained
 5 viability (as defined in IC 16-18-2-365).

6 **(c) The state shall seek a death sentence by alleging, on a page**
 7 **separate from the rest of the charging instrument, the existence of**
 8 **at least one (1) of the aggravating circumstances listed in subsection**
 9 **(d). In the sentencing hearing after a person is convicted of murder,**
 10 **the state must prove beyond a reasonable doubt the existence of at**
 11 **least one (1) of the aggravating circumstances described in**
 12 **subsection (b). However, the state may not proceed against a**
 13 **defendant under this section if a court determines at a pretrial**
 14 **hearing under IC 35-36-9 that the defendant is a mentally retarded**
 15 **individual.**

16 **(d) For purposes of subsection (c), the aggravating**
 17 **circumstances exist if both of the following circumstances exist:**

- 18 **(1) The victim was less than eighteen (18) years of age.**
- 19 **(2) The defendant committed the murder by intentionally**
 20 **killing the victim while committing or attempting to commit**
 21 **any of the following:**
 - 22 **(A) Child molesting (IC 35-42-4-3).**
 - 23 **(B) Criminal deviate conduct (IC 35-42-4-2).**
 - 24 **(C) Kidnapping (IC 35-42-3-2).**
 - 25 **(D) Rape (IC 35-42-4-1).**
 - 26 **(E) Criminal confinement (IC 35-42-3-3).**

27 ~~(c)~~ **(e)** The mitigating circumstances that may be considered under
 28 this section are as follows:

- 29 (1) The defendant has no significant history of prior criminal
 30 conduct.
- 31 (2) The defendant was under the influence of extreme mental or
 32 emotional disturbance when the murder was committed.
- 33 (3) The victim was a participant in or consented to the defendant's
 34 conduct.
- 35 (4) The defendant was an accomplice in a murder committed by
 36 another person, and the defendant's participation was relatively
 37 minor.
- 38 (5) The defendant acted under the substantial domination of
 39 another person.
- 40 (6) The defendant's capacity to appreciate the criminality of the
 41 defendant's conduct or to conform that conduct to the
 42 requirements of law was substantially impaired as a result of
 43 mental disease or defect or of intoxication.
- 44 (7) The defendant was less than eighteen (18) years of age at the
 45 time the murder was committed.
- 46 (8) Any other circumstances appropriate for consideration.
- 47 ~~(d)~~ **(f)** If the defendant was convicted of murder in a jury trial, the

jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection ~~(k)~~ **(n)** and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

(2) any of the mitigating circumstances listed in subsection ~~(e)~~ **(e)**.

~~(e)~~ **(g)** For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection ~~(f)~~ **(n)**. If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

~~(f)~~ **(h)** If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

~~(g)~~ **(i)** If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection ~~(f)~~ **(n)**.

~~(h)~~ **(j)** If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

1 ~~(i)~~ **(k)** If a person sentenced to death by a court files a petition for
 2 post-conviction relief, the court, not later than ninety (90) days after the
 3 date the petition is filed, shall set a date to hold a hearing to consider
 4 the petition. If a court does not, within the ninety (90) day period, set
 5 the date to hold the hearing to consider the petition, the court's failure
 6 to set the hearing date is not a basis for additional post-conviction
 7 relief. The attorney general shall answer the petition for post-conviction
 8 relief on behalf of the state. At the request of the attorney general, a
 9 prosecuting attorney shall assist the attorney general. The court shall
 10 enter written findings of fact and conclusions of law concerning the
 11 petition not later than ninety (90) days after the date the hearing
 12 concludes. However, if the court determines that the petition is without
 13 merit, the court may dismiss the petition within ninety (90) days
 14 without conducting a hearing under this subsection.

15 ~~(j)~~ **(l)** A death sentence is subject to automatic review by the
 16 supreme court. The review, which shall be heard under rules adopted
 17 by the supreme court, shall be given priority over all other cases. The
 18 supreme court's review must take into consideration all claims that the:

19 (1) conviction or sentence was in violation of the:

20 (A) Constitution of the State of Indiana; or

21 (B) Constitution of the United States;

22 (2) sentencing court was without jurisdiction to impose a
 23 sentence; and

24 (3) sentence:

25 (A) exceeds the maximum sentence authorized by law; or

26 (B) is otherwise erroneous.

27 If the supreme court cannot complete its review by the date set by the
 28 sentencing court for the defendant's execution under subsection ~~(h)~~, **(j)**,
 29 the supreme court shall stay the execution of the death sentence and set
 30 a new date to carry out the defendant's execution.

31 ~~(k)~~ **(m)** A person who has been sentenced to death and who has
 32 completed state post-conviction review proceedings may file a written
 33 petition with the supreme court seeking to present new evidence
 34 challenging the person's guilt or the appropriateness of the death
 35 sentence if the person serves notice on the attorney general. The
 36 supreme court shall determine, with or without a hearing, whether the
 37 person has presented previously undiscovered evidence that undermines
 38 confidence in the conviction or the death sentence. If necessary, the
 39 supreme court may remand the case to the trial court for an evidentiary
 40 hearing to consider the new evidence and its effect on the person's
 41 conviction and death sentence. The supreme court may not make a
 42 determination in the person's favor nor make a decision to remand the
 43 case to the trial court for an evidentiary hearing without first providing
 44 the attorney general with an opportunity to be heard on the matter.

45 ~~(l)~~ **(n)** Before a sentence may be imposed under this section, the
 46 jury, in a proceeding under subsection ~~(e)~~, **(g)**, or the court, in a
 47 proceeding under subsection ~~(g)~~, **(i)**, must find that:

1 (1) the state has proved beyond a reasonable doubt that at least
2 one (1) of the aggravating circumstances listed in subsection (b)
3 exists; and
4 (2) any mitigating circumstances that exist are outweighed by the
5 aggravating circumstance or circumstances."
(Reference is to HB 1746 as printed February 9, 2005.)

Representative Goodin